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In the
Supreme Court of the United States

OCTOBER TERM, 1962

PEARL LEE E. GEORGE, LAURA LEE S. HARRIS AND WILLIE LEE B. HARRIS,

Petitioners,

v.

BRYAN CLEMMONS, SHERIFF, EAST BATON ROUGE PARISH, LOUISIANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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OPPOSITION TO GRANTING WRITS OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Rule 19, Paragraph One, Subsection A of this Honorable Court's rules, states:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably

not in accord with applicable decision of this court."

For the reasons hereinafter given, it is contended that this is not an appropriate case in which a writ of certiorari should issue for the reason that a federal question is not involved, and, in the alternative, assuming that such a question is involved this court would resolve it in conformity with the decision of the Supreme Court of the State of Louisiana.

REASONS FOR DENYING THE APPLICATION FOR WRIT OF CERTIORARI

Generally speaking, certiorari will not lie to review questions of fact. 14 CJS Section 22(e). The foregoing rule is subject to the limitation that in certiorari evidence may be received only for the purpose of ascertaining whether the lower court's findings are supported by any evidence, or whether its findings are clearly against the evidence. 14 CJS Section 172 (2). The scope of review under the writ of certiorari is confined to the record, and certiorari will not lie for the purpose of reviewing defects not appearing on the face of the record. 14 CJS Section 34.

The record in this case reflected from the STATEMENT FROM BENCH OF TRIAL JUDGE ON DECEMBER 3, 1962, cited at pages 12 through 17 of petitioners' brief, reveals that the trial judge's action from which this controversy arose was based upon information which he was personally aware of, and said action was taken with the view of conducting an orderly trial. Petitioners contend that the action of the

trial judge was based principally upon the premise and with the view of segregating the courtroom. This the trial judge, in his statement from the bench on December 3, 1962, categorically refuted.

A courtroom is designed principally for the conduct of trials. In a criminal case the constitutional right of an accused to a public trial is a privilege intended for his benefit, and does not entitle the general public to take advantage of such a trial. Thus it has been generally held that courts may exclude the public, or certain members thereof, from trial proceedings when based upon reasons which would tend in any manner to interfere with the fair and impartial administration of justice. For example, the action of the court in excluding members of the public from a trial involving a rape prosecution involving young girls was upheld as against the contention of deprivation of a public trial. *Geise v. U. S.*, 262 F. 2d 151, certiorari denied 80 S. Ct. 94; 361 U.S. 842, 4 L.Ed. 2d 80; *U.S. v. Kobli*, 172 F. 2d 91; *Sawyer v. Duffy*, 60 F. Supp. 852. Also the power and right of the court to exclude photographers from the courtroom has been upheld on the basis that the constitutional right of an accused to a public trial is a privilege intended for his benefit and not for the benefit of the public. *Tribune Review Pub. Co. v. Thomas*, 153 F. Supp. 486, affirmed 254 F. Supp. 883.

From the foregoing authorities it would seem that in appropriate cases the court, having the power and right to exclude certain members of the public from a trial, would necessarily have the lesser right to control

those who were permitted and included within the courtroom during the progress of the trial.

The Sixth Amendment to the United States Constitution provides:

> "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, . . ."

This contempt proceeding with which this court is concerned arose during the trial of a misdemeanor, which means in the State of Louisiana that the trial judge acts in the role of the jury. As the jury he, himself, determined that impartiality would best be served by the action he took which forms the basis of this issue.

An intrinsic evaluation of the issue herein presented can only be determined by the factual foundation upon which the trial judge acted. As stated in the trial judge's statement from the bench of December 3, 1962, cited at pages 12 through 17 of petitioners' brief, a proceeding captioned *State of Louisiana v. Rev. B. Elton Cox* had been in progress. B. Elton Cox, a Negro, had been charged and was being tried for defaming District Judge Fred A. Blanche, Jr. and the District Attorney, Sargent Pitcher, Jr. As stated by the trial judge, prior to and during the course of this trial both the District Attorney, Sargent Pitcher, Jr., and one Reverend Jelks, the local NAACP leader, informed the court that their lives had been threatened. During the course of the trial of Rev. B. Elton Cox petitioners sat in an area where members of the Caucasian race were

seated. The trial judge was, of course, cognizant of the racial conditions prevailing in the area at the time, and aware of the information relative to threats which had been received by the District Attorney and by Reverend Jelks. At the time petitioners sat in the area where members of the Caucasian race were seated one of the defense counsel for Rev. B. Elton Cox objected, stating to the court that he "objected to all these interruptions." (See page 13 of petitioners' brief.) The trial judge, being apprehensive of serious disorder in view of his personal knowledge of the situation, had petitioners brought before the bar and gave them an opportunity to either move to another part of the courtroom, or, in the alternative, to leave the courtroom. Petitioners refused either alternative, whereupon the trial judge ruled them in contempt of court.

As stated by petitioners in their brief at page 3, under Article 19, Section 17 of the Louisiana Constitution the trial judge has the power to punish for contempt of court. Furthermore, as stated at page 3 of petitioners' brief, under L.R.S. 15:11 every court has the inherent power to enforce the orders which it has power to render, and it is the inherent duty of every judge to see that proceedings in the court in which he presides shall be carried on decently, with dignity and in an orderly manner. Under said section the court has the power to punish, as being a contempt, every interference with or disobedience of its process or orders, as well as every act interrupting or tending to interrupt its proceedings, or impairing the respect due to its authority. The question presented herein would

seem to be whether or not the trial judge had a legitimate basis for his action, or, in effect, whether or not the trial judge had reliable information or evidence which would tend to interrupt the proceedings or which would interfere with the orderly manner of a judicial proceeding.

In determining this question it should be borne in mind that a public trial is basically a constitutional right and privilege of the accused, intended for his benefit and not that of the public, and that the duty of the trial judge in ascertaining the rights and privileges granted to an accused under the Sixth Amendment to the United States Constitution is subordinated to the rights and privileges of the attending public. In determining this question it should also be borne in mind that under L.S.R. 15:422 judicial cognizance may be taken of the political, social and racial conditions prevailing in this state.

It is respectfully submitted that the action of the trial judge, based upon what he had authority under the law to take judicial cognizance of and what he had personally been informed about the case with reference to the threats of the district attorney and the NAACP leader, was valid.

There is no question but that these petitioners were in jail by virtue of a court order. In these habeas corpus proceedings filed in the trial court the trial judge was guided by the provisions of LSA-R.S. 15:-137, which provides:

"Confinement by court order; restoration of liberty after hearing on return.

If, after the hearing of the return, it appears that the relator is confined by the order of some court, he can be restored to liberty only in the following cases:

(1) Where such court has exceeded its jurisdiction;

(2) Where the original imprisonment was lawful, but by some act, omission or event which has since occurred, the relator has become entitled to his liberty;

(3) When the order of imprisonment is deficient in some legal requisite;

(4) When the order of imprisonment, although legal in form, imposes an illegal imprisonment; provided that whenever any person shall have been sentenced to any imprisonment in excess of the maximum term allowed by law for the offense of which he shall have been convicted, such person shall not, until the expiration of such maximum term, be released upon habeas corpus;

(5) When the person having the custody of the relator is not the person allowed by law to detain him;

(6) When the imprisonment is not authorized by any order, decree, judgment or sentence of any court, or by any provision of law;

(7) When the relator has been committed on a criminal charge without reasonable or probable cause.

It will thus be noted that under the foregoing provision of law and the record in this case that the trial judge could not legally restore petitioners to liberty.

This case would seem to represent a situation whereby the actions of the trial court were taken with the view of assuring to the defendant in the criminal case his constitutional right of a fair and impartial trial, and that, as such, considerations toward that view are subordinate to any considerations of alleged constitutional rights and privileges by attending spectators. The action of the petitioners herein had the effect of interfering with the trial judge's duty to see that the accused obtained a fair and impartial trial. The trial court had the power to protect the execution of its business from obstruction by petitioners. *Field v. United States*, 193 F. 2d 86.

CONCLUSION

WHEREFORE, for the reasons hereinabove stated, it is respectfully submitted that this petition for writ of certiorari to the Supreme Court of Louisiana should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, Sargent Pitcher, Jr., one of the attorneys for Bryan Clemmons, Sheriff, East Baton Rouge Parish, Louisiana, respondent herein, certify that on the ___ day of April 1963 I served copies of the foregoing brief of Bryan Clemmons, Sheriff, East Baton Rouge Parish, Louisiana in Opposition to Application for Writs of Certiorari to the Louisiana Supreme Court, by mailing the required number of copies, postage prepaid, to counsel of record for petitioners at the following address:

Robert L. Carter, 20 West 40th Street, New York 18, New York, and Johnnie A. Jones, 530 South 13th Street, Baton Rouge 2, Louisiana.

Sargent Pitcher, Jr., counsel of record for the respondent.

Sworn to and subscribed before me, the undersigned Notary Public within and for the Parish of East Baton Rouge, State of Louisiana, this ___ day of April 1963.

NOTARY PUBLIC

2926-B. 4-63

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